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NG CHIN CHAI v. PENTADBIR TANAH SEGAMAT & OTHER APPEALS

COURT OF APPEAL, PUTRAJAYA
MOHD HISHAMUDIN YUNUS JCA
ALIZATUL KHAIR OSMAN JCA
B ANANTHAM KASINATHER JCA
[CIVIL APPEALS NO: J-01(NCVC)(A)-155-04-2013, J-01(NCVC)(A)-156-04-2013, J-01(NCVC)(A)-157-04-2013 & J-01(NCVC)(A)-158-04-2013]
29 FEBRUARY 2016

C

LAND LAW: *Acquisition of land – Award of compensation – Appeal against quantum – Whether appellant precluded from appealing against order of compensation issued by High Court Judge – Calamas Sdn Bhd v. Pentadbir Tanah Batang Padang – Applicability – Land Acquisition Act 1960, ss. 40D(3), 49(1)*

D

CIVIL PROCEDURE: *Appeal – Decision of High Court – Acquisition of land – Order of compensation issued by High Court Judge – Whether appealable – Calamas Sdn Bhd v. Pentadbir Tanah Batang Padang – Applicability – Land Acquisition Act 1960, ss. 40D(3), 49(1)*

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The appellants were co-proprietors of Lot 333 ('the said land') holding equal shares in the said land. Part of the said land was acquired by the respondent under s. 3 of the Land Acquisition Act 1960 ('LAA'). Following an enquiry conducted by the Land Administrator, a written award in Form G was prepared by the Land Administrator in which he awarded the appellants a total compensation of RM68,930 for the acquisition of the said land. Objecting to the amount awarded, the appellants referred the matter to the High Court for determination. The High Court Judge, after taking into consideration the opinion of the two assessors, awarded the appellants additional compensation of RM76,816. Dissatisfied, the appellants appealed separately. The issue that arose for determination was whether the present case was appealable in view of the provision of ss. 40D(3) and 49(1) of the LAA, as well as the Federal Court decision in *Calamas Sdn Bhd v. Pentadbir Tanah Batang Padang* ('*Calamas*')

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Held (dismissing appeals with costs)
Per Alizatul Khair Osman JCA delivering the judgment of the court):

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(1) From the notice of appeal, the decision appealed against was the additional compensation awarded by the court. The questions of law referred to by the appellants, that is, the method of valuation (whether the residual method or the comparative method) and the suitability of comparables were factors which relate to the amount of compensation to be assessed. Therefore, clearly, the appellants' appeal was against the amount of compensation awarded by the judge. (paras 38 & 39)

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(2) The scheme of the LAA is such that where the objection before the court is in regard to the amount of compensation, the court shall appoint two assessors for the purpose of aiding the judge in arriving at a fair and reasonable amount of compensation. Thus, s. 40D(1) of the LAA provides that it is the assessors that will decide on the amount of compensation to be awarded, with the judge being given the discretion to elect which assessor's decision to concur with in the event that the assessors have each arrived at a decision which differs from each other. Section 40D(3) of the LAA then provides that 'any decision made under this section is final and there shall be no further appeal to a higher court on this matter'. Therefore, the appellants' contention that the words 'any decision under this section' refers only to the decisions of the assessors or assessor on the amount of compensation to be awarded and not to the decision of the judge on questions of law is without merit. (paras 41- 45)

(3) The alleged questions of law, namely, whether the learned judge was right to reject the appellants' method of valuation and to accept the respondent's comparative method and the selection of suitable comparables all relate to the issue of compensation in that they are all factors which affect the amount of compensation to be awarded to the appellants. As such, the appellants' appeal fall squarely within the ambit of s. 40D(3) of the LAA and is therefore not appealable. The appellants' contention that the decision of the judge on the method of valuation and suitability of comparables do not comprise an award of compensation under s. 49(1) of the LAA is also untenable. (paras 46 & 47)

(4) The court had taken into consideration the alleged questions of law raised by the appellants and gave its reasons why the comparative method was preferable to the residual method. The court had also taken into account the factor of time, location, accessibility, size and zoning and made the necessary adjustments before it arrived at a fair market value of the said land. The court then awarded the appellants the additional compensation for the scheduled land. This is the decision of the court which the appellants are appealing against. To contend that it is not an appeal on the award of compensation but an appeal on questions of law *per se* is to artificially construe the law in an attempt to circumvent the prohibition under s. 40D(3) and the proviso to s. 49(1) of the LAA. (paras 48-50)

(5) Based on s. 40D(3) and s. 49(1) of the LAA and the judicial interpretation of these provisions by the Federal Court in *Calamas*, the present case was not appealable as it was essentially an appeal against the amount of compensation awarded by the court below. (para 54)

Bahasa Malaysia *Headnotes*

Perayu-perayu adalah pemilik bersama Lot 333 ('tanah tersebut') memegang saham yang sama di tanah tersebut. Sebahagian daripada tanah tersebut diperolehi oleh responden di bawah s. 3 Akta Pengambilan Tanah 1960 ('APT'). Berikutan siasatan yang dikendalikan oleh Pentadbir Tanah, award bertulis dalam Borang G disediakan oleh Pentadbir Tanah di mana dia mengawardkan perayu-perayu pampasan sejumlah RM68,930 untuk pengambilan tanah tersebut. Membantah jumlah yang diawardkan, perayu-perayu merujuk kepada Mahkamah Tinggi untuk penentuan. Hakim Mahkamah Tinggi, selepas mengambil kira pendapat kedua-dua penaksir, mengawardkan perayu-perayu pampasan tambahan sejumlah RM76,816. Terkilan, perayu-perayu merayu secara berasingan. Isu yang dibangkitkan untuk penentuan adalah sama ada kes ini boleh dirayu mengambil kira peruntukan ss. 40D(3) dan 49(1) APT, serta keputusan Mahkamah Persekutuan dalam *Calamas Sdn Bhd v. Pentadbir Tanah Batang Padang* ('*Calamas*').

Diputuskan (menolak rayuan dengan kos)
Oleh Alizatul Khair Osman HMR menyampaikan penghakiman mahkamah:

(1) Dari notis rayuan, keputusan yang dirayukan adalah pampasan tambahan yang diawardkan oleh mahkamah. Persoalan undang-undang yang dirujuk oleh perayu-perayu, iaitu, kaedah penilaian (sama ada kaedah baki atau kaedah perbandingan) dan kesesuaian perbandingan-perbandingan adalah faktor-faktor yang berkaitan dengan jumlah pampasan untuk ditaksir. Oleh itu, adalah jelas bahawa rayuan perayu-perayu adalah bertentangan dengan jumlah pampasan yang diawardkan oleh hakim.

(2) Skim APT bermakna di mana bantahan yang dibawa ke mahkamah berhubung dengan jumlah pampasan, mahkamah perlu melantik dua orang penaksir untuk tujuan membantu hakim untuk menentukan jumlah pampasan yang adil dan munasabah. Maka s. 40D(1) APT memperuntukkan bahawa penaksir-penaksir yang akan menetapkan jumlah pampasan untuk diawardkan, dengan hakim diberi budi bicara untuk memilih keputusan penaksir yang beliau menyetujui jika setiap penaksir mencapai keputusan yang berbeza dari satu sama lain. Seksyen 40D(3) APT kemudian memperuntukkan bahawa 'any decision made under this section is final and there shall be no further appeal to a higher court on this matter'. Oleh itu, dakwaan perayu-perayu bahawa perkataan 'any decision under this section' hanya merujuk kepada keputusan penaksir-penaksir atau penaksir bagi jumlah pampasan untuk diawardkan dan bukan keputusan hakim terhadap persoalan undang-undang tidak mempunyai merit.

(3) Persoalan undang-undang yang didakwa, iaitu, sama ada hakim betul dalam menolak kaedah penilaian perayu-perayu dan untuk menerima kaedah perbandingan responden dan pemilihan perbandingan-perbandingan sesuai berkaitan dengan isu pampasan kerana ia merupakan faktor-faktor yang memberi kesan kepada jumlah pampasan yang akan diawardkan kepada perayu-perayu. Oleh itu, rayuan perayu-perayu termaktub dalam lingkungan s. 40D(3) APT dan dengan itu tidak boleh dirayu. Dakwaan perayu-perayu bahawa keputusan hakim berkenaan kaedah penilaian dan kesesuaian perbandingan-perbandingan tidak mengandungi award pampasan di bawah s. 49(1) LAA juga tidak boleh dipertahankan.

(4) Mahkamah telah mengambil kira persoalan undang-undang yang dibangkitkan oleh perayu-perayu dan memberikan alasan mengapa kaedah perbandingan diterima berbanding kaedah baki. Mahkamah juga mengambil kira faktor masa, lokasi, akses, saiz dan zon dan membuat pelarasan yang perlu sebelum mencapai nilai pasaran yang berpatutan bagi tanah tersebut. Mahkamah kemudian mengawardkan perayu-perayu pampasan tambahan bagi tanah yang dijadualkan. Ini adalah keputusan mahkamah yang dirayu oleh perayu-perayu. Untuk menghujahkan bahawa ini bukan rayuan terhadap award pampasan tetapi rayuan atas persoalan undang-undang adalah seolah-olah mentafsirkan undang-undang dalam usaha untuk memintas larangan di bawah s. 40D(3) dan proviso kepada s. 49(1) APT.

(5) Berdasarkan s. 40D(3) and s. 49(1) APT dan tafsiran kehakiman terhadap peruntukan-peruntukan oleh Mahkamah Persekutuan dalam *Calamas*, kes ini tidak boleh dirayu kerana pada dasarnya ia adalah rayuan terhadap jumlah pampasan yang diawardkan oleh mahkamah bawahan.

Case(s) referred to:

Bukit Rajah Rubber Company Ltd v. Collector of Land Revenue, Klang [1967] 1 LNS 12 HC ***(refd)***

Calamas Sdn Bhd v. Pentadbir Tanah Batang Padang [2011] 5 CLJ 125 FC ***(refd)***

Koriah Sudar v. Pentadbir Tanah Kuala Langat [2013] 5 CLJ 571 CA ***(refd)***

Muhammad Ismail & Ors v. Secretary of State AIR 1936 Lahore 599 ***(refd)***

Pentadbir Tanah Daerah Kota Tinggi v. Siti Zakiyah Sh Abu Bakar & Ors [2005] 4 CLJ 630 FC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 68(1)

Federal Constitution, arts. 13, 121(1B)

Land Acquisition Act 1960, ss. 2, 3, 8, 9A, 38(1), 40A, 40B, 40C, 40D(1), (2), (3), 49(1), First Schedule ss. 1(1A), (2BA), 2

For the appellants - Raymond Mah (Teh Poh Luan with him); M/s Mah Weng Kwai & Assocs

For the respondent - Shahrizal Shaari, FC; Legal State Advisor's Office, Johor

[Editor's note: Appeal from High Court, Kuala Lumpur; Land Reference No: 15NCVC-23-11/2012, 15NCVC-24-11/2012, 15NCVC-25-11/2012 & 15NCVC-26-11/2012 (affirmed).]

Reported by Sandra Gabriel

JUDGMENT

Alizatul Khair Osman JCA:

Introduction

[1] These four appeals arose out of the decision of the learned High Court Judge in respect of Land Reference No. 15NCVC-23-11-2012 (Appeal J-01 (NCVC)(A)-155-04-2013) in which he had awarded the appellant therein (Ng Chin Chai) additional compensation of RM76,812 for the acquisition of Lot 333, Grant No. 1839, Mukim Sungai Segamat, Daerah Segamat, Johor. The learned judge with the agreement of all parties, had used this case as a "test case" whereby the decision in the said case would bind the other three land reference cases, namely:

(i) No. 15NCVC-24-11-2012 (Appeal J-01(NCVC)(A)-156-04-2013);

(ii) No. 15NCVC-25-11-2012 (Appeal J-01(NCVC)(A)-157-04-2013); and

(iii) No. 15NCVC-26-11-2012 (Appeal J-01(NCVC)(A)-158-04-2013).

Salient Facts

[2] The appellants were co-proprietors of Lot 333 (the said land) holding equal shares in the said land.

[3] Part of the said land was acquired by the respondent for the purpose of "Reservation Road at Taman Utama, Mukim Sungai Segamat, District of Segamat for Pokta Sdn Bhd" under s. 3 of the Land Acquisition Act 1960 (LAA). The Declaration of Intended Acquisition under s. 8 of the LAA (Form D) was published in the Johor State Government Gazette No. 5131 on 24 June 2010.

[4] The said declaration (Form D) was amended by the declaration in the Johor State Government Gazette No. 4528 dated 14 April 2011.

[5] The said land is freehold, its category of land use agriculture with an express condition that the said land is to be used for plantation and the landowners are requested to take reasonable steps to maintain the said land from erosion.

[6] The said land comprises an area of 0.5691 hectare out of which 0.0519 hectare was acquired by the respondent pursuant to Form D dated 14 April 2011 (the scheduled land).

[7] Following the enquiry conducted by the Land Administrator on 17 August 2011, a written award in Form G was prepared by the Land Administrator in which he awarded the appellants RM15,570 each for their 1/4 share of the said land, making a total of RM62,280.

[8] He also awarded RM6,650 as costs resulting in a total compensation of RM68,930 awarded to the appellants for the acquisition of the said land. Objecting to the amount awarded, the appellants filed Form N under s. 38(1) of the LAA, for the matter to be referred to the High Court Johor for determination.

[9] In the High Court the learned judge after hearing parties and after taking into consideration the opinion of the two assessors, awarded the appellants additional compensation of RM76,816 for the scheduled land.

[10] Dissatisfied with the decision, the appellants appealed to the Court of Appeal.

The Appeal

[11] At the outset of the appeal, we posed the question to learned counsel for the appellants as to whether the matter was appealable in view of the provisions of s. 40D(3), s. 49(1) of the LAA and the decision of the Federal Court in *Calamas Sdn Bhd v. Pentadbir Tanah Batang Padang* [2011] 5 CLJ 125.

[12] Learned counsel for the appellants contended that the decision of the court on 14 March 2013 was appealable under s. 49(1) of the LAA as it involved questions of law and not the award of compensation.

[13] The contention of the appellants is that the learned judge erred in law and in fact:

(a) when he ignored and/or rejected the residual method of valuation in determining the market value of the scheduled land;

(b) when he accepted the respondent's comparables as suitable even though all the comparables were transected more than two years prior to the acquisition of the said land on 24 June 2010 and therefore are not recent sales within the requirements of s. 1(1A) of the First Schedule of the LAA; and

(c) when he failed to consider the potential development of the said land as it was surrounded by on-going commercial and residential development known as "Taman Utama" and "Taman Muhibah".

[14] According to learned counsel the decision to reject the appellants' method of valuation, to accept the respondent's comparative method and the selection of suitable comparables were questions of law made by the learned judge alone. As such the decision does not fall within the provision of s. 40D(3) of the LAA and is appealable pursuant to s. 49(1) of the LAA.

[15] In the appellants' view the proviso to s. 49(1) of the LAA which provides that there shall be no appeal from a decision that comprises an award of compensation does not apply here because "the decisions on the method of valuation and suitability of comparables do not comprise an award of compensation". The award of compensation, according to counsel was made "only subsequently by the assessors based on these findings by the learned judge".

[16] Learned counsel contended that s. 40D(3) of the LAA is consistent with the proviso to s. 49(1) of the LAA. To quote counsel's submission s. 40D(3) of the LAA states that:

> any decision made under **this section** is final and there shall be no further appeal to a higher Court on the matter.
>
> (emphasis added)

The words "this section" in s. 40D(3) of the LAA means that the prohibition against appeal is limited to a decision made pursuant to s. 40D of the LAA only. Thus, s. 40D(3) of the LAA only applies to a decision by the assessors pursuant to s. 40D(1) of the LAA or a decision by the judge choosing to concur with one of the two assessors pursuant to s. 40D(2) of the LAA as the case may be.

As the learned judge's decision on the method of valuation and suitability of comparables was neither (1) a decision by the assessors, nor (2) a decision of the judge concurring with one of the assessors, it is clear that the prohibition against appeal under s. 40D(3) of the LAA does not apply to the present case.

[17] In support of his submission learned counsel referred to the article titled:

> Land Acquisition Act 1960 - The Right of Appeal, if any, pursuant to s. 49 and the Role of Assessors in Land Reference Proceedings
>
> [2012] 1 LNS (A) / xxiiii by Su Tiang Joo.

[18] In his article, the learned writer expressed the view that based on the statutory provisions of s. 40A to 40D of the LAA the role of the assessors is limited to only one of providing an opinion on the amount of compensation to be awarded under the various heads of compensation claimed by all persons interested. Whilst the judge's role and function of hearing evidence, submissions and making rulings, decisions and orders are for the judge and the judge alone.

[19] Thus the learned writer opined that in circumstances under which it is not clear as to whether it is a question of compensation or law *simpliciter* or is a mixed question of compensation and law, it should still be for the judge to direct the assessors whether a particular head of compensation is claimable and for the assessors to them give their opinion on the amount payable.

[20] For this reason he was of the view that the judicial interpretation of s. 40D(3) to the effect that "any decision of the High Court on any decision pertaining to the compensation payable in a land reference proceeding is non-appealable…is incorrect". A

[21] Based on the aforesaid reasoning learned counsel sought to distinguish the case of *Calamas* (*supra*). The issue in that case was whether the High Court Judge was correct in determining the amount of compensation to be awarded to the appellants. The Federal Court did not consider any issue of law on the selection of comparables. On that ground therefore *Calamas* is not applicable to the present appeal. B

[22] The respondent herein who were represented by the State Legal Advisor took the position that the decision of the High Court is not appealable by virtue of s. 40D(3) and the proviso to s. 49(1) of the LAA which had been decisively interpreted by the Federal Court in *Calamas*. C

[23] The learned State Legal Advisor also relied on s. 68(1) of the Courts of Judicature Act 1964 (CJA) and the Court of Appeal's decision in *Koriah Sudar v. Pentadbir Tanah Kuala Langat* [2013] 5 CLJ 571 in relation to the aforesaid provision, in support of his position. D

[24] The learned State Legal Advisor submitted that contrary to the assertion of learned counsel for the appellants, the appeal of the appellants herein is wholly against the additional compensation awarded by the court. This is reflected in their 'Notis Rayuan' which states: E

> AMBIL PERHATIAN bahawa Perayu di sini, Ng Chin Chai yang tidak berpuas hati dengan keputusan Yang Arif Hakim Dato' Haji Zainal Azman Bin Ab Aziz yang telah diberi di Mahkamah Tinggi Muar pada 14 hari bulan Mac, 2013 **merayu kepada Mahkamah Rayuan terhadap keseluruhan keputusan tersebut**. F
>
> (emphasis added)

[25] The State Legal Advisor further argued that it is clear from a reading of the s. 40D of the LAA that the court in determining the amount of compensation to be paid will do so based on the amount as decided by the assessors under s. 40D(1) of the LAA or the assessors under s. 40D(2) of the LAA as the case may be. G

[26] For this reason, the decision on the award of compensation is final and not subject to appeal as provided under s. 40D(3) of the LAA: H

> Any decision made under this section is final and there shall be no further appeal to a higher court on the matter.

[27] The above proposition is further reinforced by s. 49(1) of the LAA, thereof which provides that "any person interested a right to appeal from a decision of the High Court to the Court of Appeal and to the Federal Court **except where the decision comprises an award of compensation**, from which there is no such right of appeal". I

(emphasis added)

A

Our Decision

[28] After careful consideration of the submissions put forward by learned counsel for the appellants and the submission of the learned State Legal Advisor, we were of the unanimous view that the appeal should be dismissed.

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[29] We were not persuaded by learned counsel for the appellants' submission that the appeal herein does not relate to the award of compensation which is not appealable under s. 40D(3) and the proviso to s. 49(1) of the LAA.

C

[30] As stated earlier, the principal ground advanced by the appellants in asserting that the appeal herein falls outside the ambit of s. 40D(3) and the proviso to s. 49(1) of the LAA is that the appeal herein is concerned with the errors of law committed by the learned judge and not the amount of compensation awarded by the court.

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[31] The errors of law allegedly committed by the learned judge are summarised below:

(i) finding that the respondent's comparables 4, 5 and 6 were suitable and allowing the assessors to decide on an award of compensation based on these, "unsuitable comparables". The said land was zoned as

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commercial land in Bandar Segamat whereas comparables 4, 5 and 6 were all zoned as residential land;

(ii) disregarding the potential development value of the said land thus making comparables 4, 5 and 6 unsuitable comparables. Reference was

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made to the cases of *Bukit Rajah Rubber Company Ltd v. Collector of Land Revenue, Klang* [1967] 1 LNS 12; [1968] 1 MLJ 176, *Pentadbir Tanah Daerah Kota Tinggi v. Siti Zakiyah Sh Abu Bakar & Ors* [2005] 4 CLJ 630 and *Muhammad Ismail & Ors v. Secretary of State* AIR 1936 Lahore 599 which established the principle that in determining the market value of an acquired piece of land consideration is also to be given to its potential

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development value; and

(iii) rejecting the residual method of valuation submitted by the appellants' valuer in favour of the comparable method in determining the market value of the scheduled land.

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[32] Whilst accepting that it is a matter of discretion for the learned judge to adopt one valid method of valuation to another valid method, the adoption of the comparable method using unsuitable comparables in this case was not in law an option.

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[33] The appellants contended that the decision to reject the appellants' method of valuation, to accept the respondent's comparative method and the selection of suitable comparables were decisions on questions of law made

by the learned judge alone. Therefore the decision does not fall within the scope of s. 40D(3) of the LAA and is appealable pursuant to s. 49(1) of the LAA.

[34] Section 49(1) of the LAA stipulates that:

> Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the court to the Court of Appeal and to the Federal Court.
>
> Provided that where the decision comprises an **award of compensation** there shall be no appeal therefrom.
>
> (emphasis added)

[35] According to learned counsel as the decisions on the method of valuation and suitability of comparables were decisions on questions of law made by the judge alone, these decisions do not comprise "an award of compensation" and are therefore not prohibited from being appealed.

[36] Similarly, argued counsel, s. 40D(3) of the LAA only prohibits decisions made by the assessors under s. 40D(1) and s. 40D(2) of the LAA from being appealed against s. 40D(3) states that "any decision made under this section is final and that shall be no further appeal to a higher court on the matter". Thus, argued counsel, since the learned judge's decisions on the method of valuation and suitability of comparables was neither (1) a decision by the assessors, nor (2) a decision of the judge concurring with one of the assessors, s. 40D of the LAA was clearly not applicable to the present case.

[37] In support learned counsel had referred to the article written by Su Tiang Joo (*supra*) for what he termed as "the proper construction and application of s. 40D of the LAA". With respect, we are unable to agree with learned counsel's submission as set out above nor do we agree with the view expressed by the learned writer in his said article as regards the construction of s. 40D(3) and s. 49(1) of the LAA.

[38] Firstly, it is quite clear from the notice of appeal that the appellant's appeal is against the award of compensation made by the learned judge. The appellants' notice of appeal states that the appellants:

> …merayu kepada Mahkamah Rayuan terhadap keseluruhan keputusan tersebut
>
> ("…appeals against the whole of the said decision")

[39] The decision of the learned judge appealed against is the additional compensation of RM76,812.00 awarded by the court; (see para. 14 of the grounds of judgment at p. 6 of the supplementary record of appeal (ROA).

This follows from the appellants' Form N, which states at para. 4 that the ground of their application to refer their objection to the court is:

A Alasan-alasan bantahan saya ialah seperti berikut:

(1) **RM62,280.00 adalah suatu harga nilai yang tidak berpatutan**.

Form O, which is the appellants' reference to the court states that the objection referred to the court is:

B Bantahan atas **amaun pampasan**.

(emphasis added)

Therefore quite clearly the appellants' appeal is against the amount of compensation awarded by the learned judge.

C **[40]** In our view the questions of law referred to by learned counsel that is, the method of valuation (whether the residual method or the comparative method) and the suitability of comparables are factors which relate to the amount of compensation to be assessed.

D **[41]** The scheme of the LAA is such that where the objection before the court is in regard to the amount of compensation the court shall appoint two assessors for the purpose of aiding the judge in determining the objection and in arriving at a fair and reasonable amount of compensation (see s. 40A of the LAA). Thus s. 40D(1) provides that it is the assessors that will decide on the amount of compensation to be awarded with the judge being given the E discretion to elect which assessors' decision he would concur with in the event that the assessors have each arrived at a decision which differs from each other. In such a circumstance the amount of compensation to be awarded shall be the amount decided upon by that assessor. (s. 40D(2) of the LAA).

F **[42]** Section 40D(3) of the LAA then provides that "any decision made under this section is final and there shall be no further appeal to a higher court on this matter".

[43] It is clear from the above provision that "any decision" therein refers to the decision of the court and not to the decision of the assessors *per se* under G s. 40D(1) of the LAA or the decision of the judge concurring with one of the assessors under s. 40D(2) of the LAA as suggested by learned counsel for the appellants.

[44] Whilst s. 40D(1) and (2) provides that the amount of compensation to H be awarded shall be the amount decided by the assessors or assessor as the case may be, the decision arrived at under that section is ultimately the decision of the court, not the assessors' or assessor's. This is clear from the shoulder note of the section itself which reads "Decision of the court on compensation".

I **[45]** The court in s. 40D comprises a judge sitting together with the two assessors (see s. 40A of the LAA). Thus "any decision made under this section" refers to the decision of the court on compensation. The contention

that the words "any decision under this section" refers only to the decisions of the assessors or assessor on the amount of compensation to be awarded and not to the decision of the judge on questions of law is, with respect, without merit. Such a construction runs counter to the clear words of s. 40D of the LAA which provides for no such bifurcation in decision making as suggested by learned counsel for the appellants.

[46] It is our view that the alleged questions of law, namely, whether the learned judge was right to reject the appellants' method of valuation and to accept the respondent's comparative method; and the selection of suitable comparables all relate to the issue of compensation in that they are all factors which affect the amount of compensation to be awarded to the appellants. (see s. 2 of the First Schedule to the LAA).

[47] As such the appellants' appeal fall squarely within the ambit of s. 40D(3) of the LAA and is therefore not appealable. Learned counsel's contention that the decisions (of the judge) on the method of valuation and suitability of comparables do not comprise an award of compensation under s. 49(1) of the LAA is clearly untenable. This can be seen from the judgment of the court itself where the learned judge when delivering the decision of the court held as follows:

> 11. Mahkamah telah memutuskan bahawa kaedah perbandingan yang digunakan oleh Responden seharusnya digunakan dan kaedah nilai baki yang digunakan oleh Pemohon adalah ditolak atas alasan:
>
> i. Harga jualan unit kedai (GDV) tidak disokong oleh jual beli sebenar di pasaran;
>
> ii. Kos infrastruktur, profesional, kos biayaan, kos pelan, kos ukur dan lain-lain tidak diambil kira oleh Penilaian Pemohon;
>
> iii. Residue Value tidak didiskaun untuk mencerminkan tempoh pembinaan projek.
>
> 12. Oleh yang demikian, berdasarkan kepada perbandingan nilaian Responden (Jabatan Penilaian dan Perkhidmatan Harta) hanya 3 perbandingan digunakan, itu perbandingan No. 4, 5 dan 6 kerana ketiga-tiganya lebih sesuai, iaitu faktor masa, lokasi, jalan masuk, saiz dan perancangan (zoning).
>
> 13. Dari pelarasan tersebut, Mahkamah memutuskan bahawa nilai pasaran yang berpatutan adalah sebanyak RM268.00 semeter persegi.
>
> 14. Oleh itu bagi pampasan.
>
> | | | |
> |---|---|---|
> | Tanah 519 meter persegi @ RM268.00 semester persegi | - | RM139,092.00 |
> | Tolak award Pentadbir Tanah | - | RM 62,280.00 |
> | Tambahan | - | RM 76,812.00 |

[48] It is clear from the aforesaid judgment that the court had taken into consideration the alleged questions of law raised by the appellants notably the acceptance of the comparative method of valuation and the suitability of the three comparables and gave its reasons why the comparative method was preferable to the residual method. Similarly with the suitability of the three comparables, the court had taken into account the factor of time, location, accessibility, size and zoning as raised by the appellants and made the necessary adjustment based on those factors before it arrived at a fair market value of the said land.

[49] Based on the fair market value arrived at which is RM268 per square metre, the court then awarded the appellants an additional compensation of RM76,812 for the scheduled land after deducting the award of the Land Administrator amounting to RM62,280.

[50] This is the decision of the court which the appellants are appealing against and to contend that it is not an appeal on the award of compensation but an appeal on questions of law *per se* is to artificially construe the law in an attempt to circumvent the prohibition (against appealing) under s. 40D(3) and the proviso to s. 49(1) of the LAA.

[51] The Federal Court in *Calamas* has put the issue to rest when it ruled as follows:

> It is trite law that courts must give effect to the clear provisions of the law. In the instant appeal, I do not see anything ambiguous in ss. 40D(3) and 49(1) of the Act. In view of this, **I am of the view that the appellant is precluded from appealing against the order compensation issued by the learned trial judge**.

[52] This court is bound by the decision of the Federal Court on the construction and effect of s. 40D(3) and s. 49(1) of the LAA. Learned counsel for the appellants tried to distinguish *Calamas* from the present case by arguing that the issue in that case was whether the High Court Judge was correct in determining the amount of compensation to be awarded to the appellant. The Federal Court, according to counsel, did not consider any issue of law on the selection of comparables and hence *Calamas* is not applicable to the present case.

[53] However a perusal of the judgment in *Calamas* would reveal that the same issues of law that were raised by the appellants here were also raised in that case. In that case Hashim Yusoff FCJ in delivering judgment for the Federal Court surmised that the main issue raised by the appellant before the Federal Court was the inadequacy of quantum His Lordship referred to the appellant's written submission in which, *inter alia* the following issues of law were raised:

(a) the scheduled land should have been valued by making comparison with homestead lands by applying s. 1 para. 1A and s. 2 of the First Schedule to the LAA. However the High Court ignored this provision and thereby committed an error of law (see p. 128 of the said case);

(b) the High Court had ignored certain provisions in the LAA in assessing that value of the scheduled land, namely s. 9A of the LAA and s. 1 para (2BA) of the First Schedule to the LAA. Section 9A requires the Land Administrator to obtain information on land use from the State Director of Town and Country Planning for the purpose of assessing the value of lands compulsorily acquired (see p. 129 of the said case); and

(c) the scheduled land was zoned for housing but the respondent (the Pentadbir Tanah Batang Padang) did not give any comparable of housing development land. The Government valuer made comparison only with the sale of agricultural lands along the Behrang Station Ulu Bernam Road.

The Court of Appeal failed to give a proper interpretation of s. 9A of the LAA and s. 1(2BA) of the First Schedule. The subject land though categorised as agricultural land in the title, should be valued as a housing land in accordance with the aforesaid provisions (p. 131 of the said case).

These issues as observed by the Federal Court ultimately revolved around the amount of compensation, that is, whether the learned judge was correct in determining the amount of compensation to be awarded to the appellant in the light of the aforesaid "issues of law".

Conclusion

[54] In conclusion it is quite clear to us that based on s. 40D(3) and s. 49(1) of the LAA and the judicial interpretation of these provisions by the Federal Court in *Calamas* (*supra*) that the matter before us is not appealable as it is essentially an appeal against the amount of compensation awarded by the court below.

[55] In their written submission, the appellants have put forth an alternative submission that is, that the prohibition in s. 40D(3) of the LAA is null and void as it contravenes art. 13 and art. 121(1B) of the Federal Constitution. However this argument was not pursued by learned counsel for the appellants in his oral submission before us. In any event this issue was not raised in the High Court nor was it raised as a ground of appeal in the appellants' memorandum of appeal. As such we did not think it necessary for us to consider this issue.

[56] For the reasons stated above we dismissed all four appeals with costs of RM10,000 for each appeal, the deposits to be refunded to the appellants.